

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Maritime Communications/Land Mobile, LLC et
al.

For commission consent to assignment of various
authorizations in wireless radio service

EB Docket No. 11-71

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2012 JUN -4 A 10:25
FCC-DOCS

ORIGINAL

DATE OF HEARING: May 22, 2012 VOLUME: 5

PLACE OF HEARING: WASHINGTON, D.C. PAGES: 520-675

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1 JUDGE SIPPEL: That is right.

2 Some --

3 MR. KELLER: We've given
4 everything we have.

5 JUDGE SIPPEL: I don't like that
6 answer.

7 MR. KELLER: Well, we can't give
8 more than we have.

9 JUDGE SIPPEL: Well, I don't think
10 that you tried hard enough to get all of the
11 information she needs. I can't believe that
12 you have licenses to stations and nobody knows
13 anything about it.

14 MR. REARDON: Your Honor, that's
15 the truth.

16 JUDGE SIPPEL: All right. Well,
17 if that's the truth, then that's the truth.
18 That might be. But I think it's going to be
19 your problem. It's not going to be the
20 Bureau's problem.

21 MR. HAVENS: Your Honor, could I
22 make a few more points on the long

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1 presentation by Mr. Keller and Ms. Kane on
2 this construction and operation issue?

3 JUDGE SIPPEL: Well, I guess you
4 can. I will let you do it, but I'm not going
5 to make anybody stay around for it. We'll
6 hear it on the record.

7 MR. HAVENS: Sure. Thank you.

8 One of the points that Mr. Keller
9 asserted is that the construction has been
10 adjudicated. That is not correct. I know all
11 of these proceedings. I'll be glad to show
12 you.

13 There has never been a showing by
14 either Maritime or Mobex or any of the
15 predecessors that they know anything at all by
16 any construction deadline.

17 Construction does not mean an
18 operating station. It means they built it
19 with equipment and in the case of --
20 interconnect at the construction deadline.

21 Mr. Keller also made a long
22 argument about the geographic licenses that

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1 Maritime has are subject to some of the
2 site-based licenses. That presupposes that
3 there is a definition of the coverage area of
4 the site-based licenses.

5 The Wireless Bureau has issued to
6 Maritime two orders that Maritime turn over to
7 SkyTel entities because we hold the geographic
8 licenses in most -- in large part of the
9 country subject to the Maritime site-based
10 licenses.

11 But under FCC rules 80.385B, we
12 have the right -- according to two orders from
13 down at the Wireless Bureau, we have the right
14 to get from Maritime these details on its
15 actual operating site-based stations so that
16 we know how we can use our geographic spectrum
17 up to the limits of its F-5050 contour. We
18 can't determine the F-5050 contour without
19 those details.

20 Maritime counsel has written back
21 to us several times in its documents in our
22 New Jersey litigation that we will not

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1 provide, Maritime will not give us, those
2 details.

3 The issue is that Maritime cannot
4 state that only its geographic licenses are
5 subject to the site-based licenses. That is
6 all. Those site-based licenses are in the
7 middle. Many of them are in the middle of my
8 companies' geographic licenses. And we're
9 being barred from using our geographic
10 licenses around the country for that reason.

11 And, plus, there are some on the
12 borders between the geographic licenses that
13 my company holds and Maritime holds. Some of
14 their site-based station coordinates are near
15 the borders. And we can't tell, nor can
16 Maritime, how that site-based license affects
17 the geographic licenses, ours and theirs,
18 until they produce evidence and give it to us
19 of what they are actually operating.

20 Now, if they are not operating at
21 all and they don't have any evidence of
22 construction and, yet, they are trying to

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1 maintain those stations, the whole thing just
2 breaks apart. The whole purpose of the
3 site-based versus the incumbent breaks apart.
4 I mean, that gets back to the issue of why
5 does Maritime not have any evidence of the
6 construction?

7 It answered that. It said the
8 information that it had when it bought the
9 stations from the licenses and the physical
10 stations from Mobex, those documents were --
11 Maritime has stated that it was satisfied
12 looking at those documents of construction and
13 operation. It was satisfied. It chose not to
14 keep those documents. Let them remain with
15 Mobex.

16 Mobex put them in storage, didn't
17 pay the storage fee. Mr. Keller testified
18 that he believed that his company -- his
19 client believed that it was in storage. All
20 the client had to do throughout this whole
21 hearing or at any time, you know, since
22 Maritime bought these, all it had to do is

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1 make one phone call to the storage company,
2 whose name they knew, to find out if those
3 documents were still there.

4 Those are the 100 boxes we're
5 getting.

6 JUDGE SIPPEL: Are you finished?

7 MR. HAVENS: Yes, sir.

8 JUDGE SIPPEL: Okay. Hold on a
9 second. We've got a question.

10 MR. PLACHE: From Pinnacle's --

11 JUDGE SIPPEL: Yes. Pinnacle's
12 counsel. Yes, sir. Say your name again, sir.

13 MR. PLACHE: Matthew Plache.

14 JUDGE SIPPEL: All right. Thank
15 you.

16 MR. PLACHE: From the standpoint
17 of Pinnacle Wireless and its concerns,
18 Pinnacle is concerned about station WRV374.
19 And we would want to make sure that any
20 information in those 100 boxes relevant to
21 construction of WRV374 is being preserved.

22 JUDGE SIPPEL: WRV374?

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1 MR. PLACHE: Three seventy-four.

2 JUDGE SIPPEL: Where is that
3 station located?

4 MR. PLACHE: Up and down the East
5 Coast. The Pinnacle Wireless is using it in
6 New Jersey to operate its system for the
7 turnpike authority and for the Meadowlands.

8 JUDGE SIPPEL: I remember reading
9 that story as I was going to go drive up the
10 turnpike.

11 MR. PLACHE: We don't have
12 information on the original construction 20
13 years back.

14 JUDGE SIPPEL: You don't?

15 MR. PLACHE: We don't because
16 there is no way we would have information on
17 that. We know that a company called
18 Regionette owned the license at one point and
19 actually was the tenant paying for the lease
20 who was listed as the lessee at one of the
21 sites that as operating under that license.
22 So we know that Regionette was operating just

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1 based on that information.

2 JUDGE SIPPEL: But does this have
3 anything to do with anything that Mr. Havens
4 has, any of his geographic licenses?

5 MR. PLACHE: Apparently Mr. Havens
6 holds the geographic license for part of the
7 coverage in New Jersey.

8 JUDGE SIPPEL: Is that right, Mr.
9 Havens?

10 MR. HAVENS: One of my companies
11 has the --

12 MR. PLACHE: Actually, not Mr.
13 Havens. One of his companies that he is not
14 acting as counsel for.

15 JUDGE SIPPEL: Well, but --

16 MR. HAVENS: Look, I represent my
17 companies in the licensing matters before the
18 FCC. That is what you are asking about. I
19 can certainly address that.

20 JUDGE SIPPEL: Well, as a fact
21 witness, not as a lawyer and not as an expert.

22 MR. HAVENS: Fine. You know, the

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1 issue here is Maritime issue G. We have gone
2 over these boxes.

3 JUDGE SIPPEL: Are you going to
4 answer? Wait a minute. Now, wait a minute.
5 Mr. Plache has a question or he made a point
6 about station WRV374 in the New Jersey
7 geographic area.

8 MR. HAVENS: Sure. Yes.

9 JUDGE SIPPEL: Do you have
10 anything to do with that station?

11 MR. HAVENS: Yes. One of my
12 companies holds the A block, geographic, and
13 CF license for the Northeast, which extends
14 down into roughly half of New Jersey. And in
15 that northern half of New Jersey and along the
16 border, Maritime has certain stations under
17 its site-based license WRB374. So Pinnacle
18 counsel is correct to that extent.

19 JUDGE SIPPEL: Okay. So Maritime
20 has the site-based and you have the
21 geographic. Now, what is the name of the
22 company that you say that has that?

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1 MR. HAVENS: Let me think. I
2 think -- you know, I would have to look that
3 up because we have one -- we have the A block
4 and the B block in the Northeast. And one of
5 them is Environmental, LLC. I believe that
6 has the B block. The other one I believe is
7 Intelligent Transportation and Monitoring
8 Wireless, LLC. That has A block. I'd have to
9 verify that.

10 JUDGE SIPPEL: Well, I got you
11 stumped on one. Go ahead. You verify and let
12 us know. Email would be fine.

13 MR. HAVENS: Okay. Email is fine.
14 I will send an email, and I will verify.

15 In terms of the preservation of
16 the boxes, that is our first goal. And we are
17 doing that in a way that -- you know, we are
18 not going to touch the boxes. My companies
19 and my counsel will have a bonded third party
20 contractor to take all action with the storage
21 company to scan and preserve on a CD all of
22 the boxes, all of the contents as they are at

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1 this time so that all of the parties will be
2 assured that the evidence is exactly as it has
3 been.

4 JUDGE SIPPEL: I am going to ask
5 you this. Actually, I am going to require it.
6 I want to get from you a pre-status report on
7 all business about those documents by the
8 31st. I'm not saying you have to have
9 everything done. I'm just saying let me know
10 what actually is the status of getting things
11 done at that point.

12 And just again you can do it by
13 email. Send copies to all of the other
14 parties and lawyers. Okay?

15 MR. HAVENS: Yes, sir.

16 JUDGE SIPPEL: All right. And let
17 me ask you one other question. You cited to
18 a rule, 80. something.

19 MR. HAVENS: Yes, 80.385B. And
20 that rule, in essence, provides that the
21 geographic licensee will provide a defined
22 protected area around a co-channel or same

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1 channel site-based station.

2 And the FCC Wireless Bureau ruling
3 on that -- in fact, Maritime asked for a
4 declaratory ruling that the Bureau permit its
5 site-based stations to be protected from the
6 co-channel geographics surrounding licensee by
7 the maximum assumed parameters permitted under
8 the granted license.

9 Mr. Stone of the Bureau ruled that
10 that is not correct, that a site-based
11 licensee is entitled to protection of its
12 actual operating station.

13 JUDGE SIPPEL: Do you have a
14 written ruling on that?

15 MR. HAVENS: Yes, sir, two
16 rulings. And the last ruling was not
17 challenged by Maritime in its final ruling.
18 I'll be glad to identify those and provide
19 copies.

20 JUDGE SIPPEL: That would be -- I
21 would like those rulings, yes. Are they in
22 the form of a letter ruling or an order?

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1 MR. HAVENS: I believe the
2 declaratory ruling is labeled a letter ruling.
3 It did have lettering clauses at the end. And
4 the order on reconsideration was an order on
5 reconsideration.

6 JUDGE SIPPEL: I would like to get
7 those as soon as you can.

8 MR. HAVENS: Yes. I will provide
9 those.

10 JUDGE SIPPEL: With copies again
11 to everybody. You can send it by email. But
12 if you have them handy, it would do me a big
13 service if you would just get them to me.

14 MR. HAVENS: I will do that right
15 away.

16 JUDGE SIPPEL: Thank you, sir.

17 MR. PLACHE: Your Honor, I believe
18 the two licensees are represented by Mr.
19 Jackson.

20 JUDGE SIPPEL: The two --

21 MR. PLACHE: The two licensees
22 mentioned, the two companies mentioned as

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1 entities.

2 JUDGE SIPPEL: Well, give me the
3 names of those licensees. We're talking about
4 WRV374. What else are you talking about?

5 MR. PLACHE: That's what I was
6 talking about.

7 MR. HAVENS: I'm only responding
8 to the Judge's request to provide status. I'm
9 not going to make an argument.

10 JUDGE SIPPEL: That's great.
11 Thank you, Mr. Havens. We're making progress.

12 Mr. Jackson?

13 MR. JACKSON: Yes. Just two very
14 brief items, Your Honor.

15 JUDGE SIPPEL: Yes, sir.

16 MR. JACKSON: My clients would
17 strongly support the position of the Bureau on
18 the discovery extension. That proposal we
19 would support also.

20 And, second, Mr. Plache indicated
21 that apparently his client did some due
22 diligence when they were going to release this

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1 spectrum. And we're looking for some
2 documents.

3 My clients have some outstanding
4 discovery to the applicants about certain
5 questions related to issue G. And I believe
6 they have not been responded to. And I don't
7 think they have been directed to.

8 At some point, Your Honor, we
9 would like you to direct them to respond.

10 JUDGE SIPPEL: Was this in a
11 discovery interrogatories or --

12 MR. JACKSON: Yes. Last fall, I
13 believe, Your Honor, well before I became
14 involved in this case.

15 JUDGE SIPPEL: Could you resurrect
16 it and send me a copy?

17 MR. JACKSON: Yes, Your Honor.

18 JUDGE SIPPEL: It's on it, I know,
19 but it would help.

20 MR. JACKSON: Yes, Your Honor.

21 JUDGE SIPPEL: I have limited
22 resources in my office I'm sure you know.

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1 Okay. Okay.

2 Mr. Havens, you are cooking with
3 gas, let me tell you.

4 MR. HAVENS: I appreciate it.

5 JUDGE SIPPEL: Okay. Let's keep
6 it at that. Five months is what I going to --
7 is going to be the interim extension for
8 discovery. And as I get further and further
9 down the road and further status reports, you
10 know, that date is going to be refined. Right
11 now it's a maximum of five months, but asap is
12 the standard.

13 MS. KANE: Your Honor?

14 JUDGE SIPPEL: Yes, ma'am?

15 MS. KANE: When we proposed the
16 original 4 months, we didn't expect we would
17 be getting 100 boxes of documents. The 4
18 months would have been difficult with the 12
19 boxes we got from Maritime. So to add another
20 100 boxes potentially, we have no idea whether
21 any of that is relevant documents that we
22 would have to still now go through to

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1 determine if they are even responsive to
2 anything in our requests could take
3 considerable time. So I think we would be
4 looking for at least a minimum of six months
5 of discovery to have to go through those.

6 I mean, you're looking at the
7 trial team. It's two people. So to go
8 through 100 boxes of documents when we haven't
9 had anybody go through them to determine if
10 they are even relevant to this hearing --

11 JUDGE SIPPEL: All right. But
12 five months is what we -- I'll go to six
13 months, and that's it. I don't mean to say
14 that you're going to live or die with six
15 months. I'm saying you are going to have to
16 come in and show me very good reason why it
17 has to be beyond six months. Six months is a
18 pretty decent time.

19 MS. KANE: We understand, Your
20 Honor, but we don't even have the 100 --

21 JUDGE SIPPEL: That's why I'm
22 saying. I mean, I'm saying I've got to set

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